

Remarks

a. Claim Objections based on 35 USC § 102

Claims 32, 57-63, 65-67, and 70-74 were rejected under 35 USC § 102(b) as being anticipated by U.S. Statutory Invention Registration H1039 to Tripp et al.

With respect to claim 32, the Office Action states that Tripp teaches the claimed element of a breathing mask having "at least one EEG sensor extended from the mask and positioned to detect brain activity." The Office Action claims support of this proposition in Col. 12, line 3 of Tripp.

The applicant respectfully disagrees with the Office Action. First, Tripp does not disclose an EEG sensor extending from the mask. The mask disclosed in Tripp uses optical transducers located on the mask to take oximetric readings. This is shown in Fig. 3 and described in Column 8, lines 29-63 of Tripp. Tripp does not disclose an embodiment having an EEG sensor extended from the mask.

With respect to the citation of Col. 12, line 3, we respectfully submit that the citation fails to disclose or teach the use of an EEG sensor extended from the mask with the EEG sensor positioned to detect brain activity. In fact, when read in context, the entire sentence (which begins in Col. 11 line 65) would suggest that additional monitoring devices would be needed in addition to the mask.

"The signals developed by the present optical sensing of a pulsating vascular bed can, of course, be combined with other signals which indicate

a deterioration of physiological condition in a pilot – signals such as eye blink sensing, hand grip on control stick measurement, head slump detection, EEG indications and incurred G-force magnituded. Signals of this nature may be combined with the output signals of the present system to provide a correlated or verified physiological condition indicating signal.” Col. 11 line 65-68, Col. 12 line 1-7

At the very least, the above cited reference fails to suggest, with the requisite amount of specificity, extending an EEG sensor from a mask so that the sensor is positioned to detect brain activity. When read in context, the citation merely teaches of using additional monitoring equipment separate from the mask. One of the objectives of the subject invention is to minimize the number of monitoring devices used. The embodiment in Claim 32 combines an EEG sensor with the mask in order to alleviate the need of placing EEG sensors and a mask separately. Tripp fails to disclose or teach of any such embodiment.

Secondly, another objective of the embodiment in Claim 32 is to have the EEG sensor positioned with respect to the mask so that when the mask is applied, the EEG sensor would be positioned to detect brain activity. There is no disclosure or teaching in Tripp which would suggest such positioning. One skilled in the art, would readily appreciate that Tripp’s mask (which only surrounds the nose and mouth and does not include any extensions adjacent to the forehead) would not be able to position an EEG sensor such that suitable EEG readings of brain activity can be taken.

In light of the above arguments, applicant respectfully submits that Claim 32 is allowable over Tripp, and as such, we respectfully request that the rejections on claim 32, and to claims 57-72 which depend on claim 32 be withdrawn.

With respect to independent claims 73 and 74, Tripp does not disclose or teach the use of a computer adapted to determine sleep states (claim 73) or arousal (claim 74). One application for the mask of claims 73 and 74 is for use in monitoring sleep states and arousal of sleeping patients during a sleep breathing study. Tripp's mask was developed for use by pilots during flight; consequently, there would be no need to study their sleep patterns and sleep states. We respectfully submit that there are no references in Tripp to a computer adapted to determine sleep states or arousal. As such, there is no teaching or disclosure in Tripp which would suggest the use of a mask in communication with a computer adapted to determine sleep states or arousal.

In light of this, we respectfully submit that claims 73 and 74 are allowable over Tripp, and as such, we respectfully request that the rejections based thereon be withdrawn.

b. Claim Objections based on 35 USC § 103

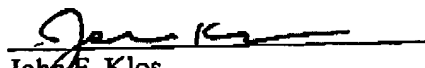
Claims 64, 69, and 68 were rejected under 35 USC § 102(b). It is believed that claim 32 is now in condition for allowance, and as such, claims 64, 69, and 68 which depend on claim 32 is allowable as well.

Conclusion

Applicant respectfully submits that, the subject application is in condition for allowance, and allowance thereof is kindly requested. Should the Examiner wish to discuss these claims further, or should an Examiner's Amendment be needed in order for the claims to proceed to allowance, the Examiner is invited to contact the Undersigned attorney at the Examiner's earliest convenience.

Respectfully submitted,
Compumedics Limited,
by its Attorneys

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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8:

I hereby certify that this paper and any papers referred to herein are being sent via facsimile to Commissioner for Patents telephone number 703-872-9302 on December 18, 2003.

John F. Klos:


Signature